

## **REMARKS**

This is intended as a full and complete response to the Final Office Action dated July 10, 2008, having a shortened statutory period for response set to expire on October 10, 2008. Applicants submit this response to place the application in condition for allowance or in better form for appeal. Please reconsider the claims pending in the application for reasons discussed below.

Claim 5 is pending in the application. Claim 5 remains pending following entry of this response.

### Claim Rejections - 35 U.S.C. § 103

Claims 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Bonomi et al.* (U.S. Patent No. 6,769,127, hereinafter, "*Bonomi*") in view of *Sartain et al.* (US 5,914,712) and in further view of *Pallakoff* (U.S. Patent No. 6,269,343).

Applicants respectfully traverse the rejection.

The Examiner bears the initial burden of establishing a prima facie case of obviousness. See MPEP § 2141. Establishing a prima facie case of obviousness begins with first resolving the factual inquiries of *Graham v. John Deere Co.* 383 U.S. 1 (1966). The factual inquiries are as follows:

- (A) determining the scope and content of the prior art;
- (B) ascertaining the differences between the claimed invention and the prior art;
- (C) resolving the level of ordinary skill in the art; and
- (D) considering any objective indicia of nonobviousness.

Once the *Graham* factual inquiries are resolved, the Examiner must determine whether the claimed invention would have been obvious to one of ordinary skill in the art.

Respectfully, Applicants submit that the Examiner has not properly characterized the teachings of the references and/or the claims at issue. Accordingly, a prima facie case of obviousness has not been established.

The Examiner concedes that the *Bonomi* does not teach a plurality of subscriber groups, wherein each group includes a subset of subscribers and wherein members of each subscriber group are determined prior to an offer to purchase a program. The Examiner submits, however, that the *Sartain* does teach these limitations and that it would be obvious to modify the *Bonomi* based on the teachings of the *Sartain*. However, “rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness”. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006); cited with approval in *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1740-41 (2007). In this case, Applicants respectfully submit that the reasons given by the Examiner to support the modification are mere conclusory statements that have no rational underpinning.

For example, the Examiner states that subscribers may be defined as a subscriber group according to their common location on the same block of a street or by the language that they speak, as disclosed by the *Sartain*, in order to help an operator at the provider to “easily update the list of subscribers and/or distribute programming to subscribers in an effective manner”. Final Office Action, page 3. However, the Examiner gives no reason why modifying *Bonomi* to include subscriber groups would facilitate updating the list of subscribers and/or allow for the effective distribution of programming. In fact, Applicants respectfully submit that these objectives are already achieved by the *Bonomi* and are in no way further facilitated by the proposed modification. For example, updating the record for “Customer X” is in no way facilitated by defining a subscriber group that includes “Customer X”. In either case, the provider must still select and edit the record corresponding to Customer X.

In fact, one of the objectives of the *Bonomi* is to achieve a higher level of granularity in order to customize the service of individual users:

Yet another aspect of the invention is that services provided by the media delivery system can be restricted differently for different users of a common subscriber account. *Bonomi*, paragraph 2, lines 49-51.

Therefore, any content delivery model that treats subscribers as groups, rather than individuals is directly contrary to one of the objectives of the *Bonomi*. Therefore, the *Bonomi* actually teaches away from the modifications suggested by the Examiner.

Therefore, the claims are believed to be allowable, and allowance of the claims is respectfully requested.

### Conclusion

Having addressed all issues set out in the office action, Applicants respectfully submit that the claims are in condition for allowance and respectfully request that the claims be allowed.

If the Examiner believes any issues remain that prevent this application from going to issue, the Examiner is strongly encouraged to contact Gero McClellan, attorney of record, at (336) 698-4286, to discuss strategies for moving prosecution forward toward allowance.

Respectfully submitted, and  
**S-signed pursuant to 37 CFR 1.4,**

/Gero G. McClellan, Reg. No. 44,227/

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